

1 not “filled out, written on, signed, or dated by Plaintiff.” (*Id.*) The Court rejects
2 Plaintiff’s argument for three reasons.

3 First, Plaintiff is evidently mistaken about the 602 that was rejected by the
4 November 23, 2010 denial and considered by the Magistrate Judge. That 602,
5 which is attached to the Declaration of P. Shank (Chief Support Executive at
6 California State Prison – Los Angeles County), appears to have been filled out,
7 signed, and dated by Plaintiff. (*See* P. Shank Dec., ¶ 9(a), Exh. A at 3-5.)

8 Second, Plaintiff’s argument is nonsensical. The Court fails to see why
9 prison staff would, in an effort to prevent Plaintiff from exhausting: (1) submit a
10 602 on behalf of Plaintiff; (2) deny that same 602; and then (3) send that denial to
11 Plaintiff with instructions to “request[] a Second Level Review” “[i]f dissatisfied.”
12 (*See* P. Shank Dec., ¶ 9(a), Exh. A at 2.)

13 Third, the Court notes that this is the *first time* that Plaintiff makes the
14 argument that he did not submit the subject 602. Given that Plaintiff has
15 previously provided detailed accounts of his efforts to exhaust, the Court finds it
16 difficult to believe that Plaintiff would have left this allegation out, if true. (*See*
17 FAC, Exhs. A1-A13; *see also* Plaintiff’s Opp. to Mot. to Dismiss at 2-6, Exhs. D-
18 E.)

19 Consequently, the Court is not persuaded that this was a situation where
20 “administrative procedures were unavailable” *See Ngo v. Woodford*, 539 F.3d
21 1108, 1110 (9th Cir. 2008). Plaintiff has not satisfied his obligation to exhaust all
22 available remedies. *See Brown v. Valoff*, 422 F.3d 926, 935 (9th Cir. 2005) (“The
23 obligation to exhaust ‘available’ remedies persists as long as *some* remedy remains
24 ‘available.’”)

25 ///

26 ///

27 ///

1 Accordingly, IT IS ORDERED THAT:

- 2 1. The Report and Recommendation is approved and accepted.
3 2. Judgment be entered dismissing this action without prejudice.
4 3. The Clerk serve copies of this Order and the Judgment on the parties.

5
6 DATED: July 10, 2012
7

A handwritten signature in black ink, reading "Gary Klausner", written over a horizontal line.

8 HON. R. GARY KLAUSNER
9 UNITED STATES DISTRICT JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28